

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROBERTO DURAND,

Plaintiff,

v.

CHARLES DANIELS, *et al.*,

Defendants.

Case No. 3:21-cv-00002-MMD-WGC

ORDER

This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by Roberto Durand, a prisoner incarcerated at Ely State Prison. (ECF Nos. 1, 1-1.) On January 6, 2021, the Court issued an order denying the Plaintiff's application to proceed *in forma pauperis*, without prejudice, because the application was incomplete. (ECF No. 4 at 2.) The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$402 on or before March 8, 2021, 2021. (*Id.* at 2). On January 11, 2021, Plaintiff filed a motion for appointment of counsel (ECF No. 5) and a financial certificate (ECF No. 6). Then on January 13, 2021, Plaintiff filed a second incomplete application to proceed *in forma pauperis* that was still missing the required inmate account statement for the previous six-month period. (ECF No. 7.) The March 8, 2021 deadline has now expired, and Plaintiff has not filed a fully complete application to proceed *in forma pauperis* or paid the full \$402 filing fee.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for

1 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
 2 (affirming dismissal for failure to comply with an order requiring amendment of complaint);
 3 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to
 4 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone*
 5 *v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure
 6 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
 7 (affirming dismissal for lack of prosecution and failure to comply with local rules).

8 In determining whether to dismiss an action for lack of prosecution, failure to obey
 9 a court order, or failure to comply with local rules, the court must consider several factors:
 10 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 11 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 12 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
 13 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
 14 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

15 Here, the Court finds that the first two factors, the public's interest in expeditiously
 16 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
 17 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
 18 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
 19 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
 20 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
 21 disposition of cases on their merits—is greatly outweighed by the factors in favor of
 22 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
 23 the court's order will result in dismissal satisfies the "consideration of alternatives"
 24 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
 25 at 1424. The Court's order requiring Plaintiff to file another application to proceed *in forma*
 26 *pauperis* or pay the full \$402 filing fee on or before March 8, 2021 expressly stated: "IT
 27 IS FURTHER ORDERED that, if Plaintiff does not file a fully complete application to
 28 proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a

1 civil action on or before March 8, 2021, this case will be subject to dismissal without
2 prejudice for Plaintiff to refile the case with the Court, under a new case number, when
3 Plaintiff has all three documents needed to file a complete application to proceed *in forma*
4 *pauperis* or pays the the full \$402 filing fee." (ECF No. 4 at 3). Thus, Plaintiff had adequate
5 warning that dismissal would result from noncompliance with the Court's order to file
6 another application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before
7 March 8, 2021.

8 It is therefore ordered that this action is dismissed without prejudice based on
9 Plaintiff's failure to file a fully complete application to proceed *in forma pauperis* or pay
10 the full \$402 filing fee in compliance with this Court's order dated January 6, 2021. (ECF
11 No. 4).

12 It is further ordered that pending motions (ECF Nos. 5 and 7) are denied as moot.

13 The Clerk of Court is directed to enter judgment accordingly and close the case.
14 No other documents may be filed in this now-closed case.

15 DATED THIS 16th Day of March 2021.

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18 MIRANDA M. DU
19 CHIEF UNITED STATES DISTRICT JUDGE
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